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6                   UNITED STATES DISTRICT COURT  
7                   WESTERN DISTRICT OF WASHINGTON  
8                   AT SEATTLE

9 KELLY GENE MOERKE,

10                   Plaintiff,

11                   v.

12                   COMMISSIONER OF SOCIAL  
13                   SECURITY,

14                   Defendant.

15                   Case No. C22-5516-MLP

16                   MINUTE ORDER

17                   The following Minute Order is made at the direction of the Court, the Hon. Michelle L.  
18                   Peterson, United States Magistrate Judge:

19                   The parties have filed a stipulated motion to award attorney's fees and expenses to  
20 Plaintiff under the Equal Access to Justice Act ("EAJA"). (Dkt. # 16.) EAJA provides that "[a]  
21 party seeking an award of fees and other expenses shall," in addition to other requirements,  
22 "allege that the position of the United States was not substantially justified." 28 U.S.C.  
23 § 2412(d)(1)(B). This sentence "requir[es] the applicant simply to 'allege' that the position of the  
United States was not substantially justified." *Scarborough v. Principi*, 541 U.S. 401, 408  
(2004); *see also Grendler v. Kijakazi*, 2023 WL 144157, at \*1 (D. Or. Jan. 10, 2023) (denying  
without prejudice EAJA fee petition lacking an allegation that the government's position was not

1 substantially justified because “the Court will not infer matters that are mandated under statute to  
2 be expressly included in the fee petition.”).

3 The parties’ motion, although stipulated, fails to allege that the position of the United  
4 States was not substantially justified. Accordingly, the Court DENIES the motion (dkt. # 16)  
5 without prejudice and with leave to file an amended petition that cures the identified deficiency.

6 Dated this 30th day of March, 2023.

7 Ravi Subramanian  
Clerk of Court

8 By: Tim Farrell  
9 Deputy Clerk

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